

ESTATE OF TERRANCE WAYNE WHITE BEAR

IBIA 78-8

Decided July 27, 1978

Appeal from administrative law judge's order determining heirs after reopening.

Affirmed.

1. Indian Probate: State Law: Applicability to Indian Probate, Intestate Estates

The Department is not foreclosed from considering as evidence in an heirship determination an affidavit of paternity which was not executed in accordance with state law.

APPEARANCES: Harry L. Malloy, Esq., Freed, Dynes, Malloy, and Reichert, Dickinson, North Dakota, for appellants; Robert A. Mandel, Esq., North Dakota Legal Services, New Town, North Dakota, for appellee.

OPINION BY ADMINISTRATIVE JUDGE HORTON

This is an appeal from an order determining heirs after reopening entered by Administrative Law Judge Daniel S. Boos on January 18, 1978.

Terrance Wayne White Bear, deceased Fort Berthold U-1687, died intestate on July 4, 1971, at the age of 24 years, possessed of trust property in the State of North Dakota. An order determining heirs was issued in this estate on July 25, 1972, whereby decedent's mother and father were named sole heirs at law.

On May 25, 1977, the Board granted a petition to reopen the subject estate filed by Myrna Marie Krueger, a non-Indian, on behalf of her minor child, Terri Lynn Krueger, who is alleged to be the illegitimate daughter of Terrance Wayne White Bear. On September 15, 1977, Judge Boos conducted a hearing at New Town, North Dakota, to receive

evidence concerning the paternity of Terri Lynn Krueger and her mother's diligence in seeking correction of the initial heirship determination.

By decision dated January 18, 1978, Judge Boos concluded that Terri Lynn Krueger is the surviving daughter of Terrance Wayne White Bear. This finding is based primarily on the fact that the decedent executed a paternity affidavit to this effect on July 29, 1969, before a notary public. Judge Boos also found that Myrna Marie Krueger was not dilatory in petitioning for relief on behalf of her daughter. Based on the above findings Judge Boos' order of January 18, 1978, vested equitable title to all of decedent's trust land in Terri Lynn Krueger.

This appeal was filed on February 21, 1978, by surviving children of decedent's father and mother, the original distributee's of decedent's estate, subsequently deceased on January 21, 1975, and June 26, 1975, respectively.

The Board has completed a full review of the record in this matter, including the submissions of the parties. We hold that the Administrative Law Judge's findings and conclusions contained in his January 18, 1978, decision are supported by a preponderance of credible evidence.

[1] Appellants presented no evidence to disprove the truthfulness of the statements made by the decedent in his affidavit of paternity. Instead, they have alleged that the affidavit was not executed in accordance with North Dakota law, that adherence to Judge Boos' decision on reconsideration would result in trust land being acquired in fee status, and that the petitioner should not be allowed to benefit from her undue delay in seeking relief. Assuming, arguendo, that State requirements were not followed by the decedent in execution of the affidavit of paternity, the Department is not foreclosed from considering such evidence in ascertaining the rightful heirs to Indian land. See Estate of Jeanette Scott Edland, IA-107, 63 I.D. 141 (decided May 17, 1956). Second, the land involved in this estate will not be removed from trust status by virtue of Judge Boos' order. Lastly, the Board agrees with the Administrative Law Judge's conclusion that under the circumstances of this case, the petitioner was not dilatory in requesting reopening of the estate.

Therefore, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 18, 1978, Order Determining Heirs After Reopening entered by Administrative Law Judge Daniel S. Boos is hereby AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

Wm. Philip Horton
Administrative Judge

We concur:

Mitchell J. Sabagh
Administrative Judge

Alexander H. Wilson
Chief Administrative Judge